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OFFICE OF PETITIONS

In re Application of :
Martin Vornehm et al : DECISION ON PETITION
Application No. 10/762,946 : UNDER 37 CFR 1.78(a)(3)
Filed: January 22, 2004 :
Attorney Docket No. LUKP:103US :
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 27, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 365(c)) for the benefit of prior-filed PCT Application No. PCT/DE02/02650, filed July 18, 2002.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of

the series code and serial number) and indicating the relationship of the applications. While the petition did state the relationship of the PCT application to the instant application, **a separate paper for the amendment in compliance with 1.4(c) is required. Additionally, the priority data for the foreign application should not be included with the benefit claim under § 120 reference to be amended. Furthermore, the foreign priority data have been included in the previously filed declarations.**

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment addressing the above is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.


Karen Creasy
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for Patent Examination Policy